

FIRST JUDICIAL DISTRICT COURT
COUNTY OF SANTA FE
STATE OF NEW MEXICO

STATE OF NEW MEXICO,
Plaintiff.

vs.

John T. Duff
Defendant.

No. D-101-CR-2012-00490

CRIMES CHARGED

GRAND JURY INDICTMENT

THE GRAND JURY CHARGES:

COUNT 1: FRAUDULENT SALE OF A SECURITY (Securities Fraud)

On or about March 22, 2012, in Santa Fe County, State of New Mexico, the above named defendant did commit the crime of securities fraud. The defendant offered and sold a security to the investment firm of Hutchinson, Shockey, Erley & Co.

The defendant offered to sell and sold \$22,655,000.00 in bonds entitled SENIOR LIEN PUBLIC PROJECT REVOLVING FUND REVENUE BONDS, SERIES 2012A to the investment firm Hutchinson, Shockey, Erley & Co., pursuant to a competitive bidding process held on March 22, 2012; and said bond offer and sale was based on a "Preliminary Official Statement" (POS) that included fiscal year (FY) 2011 financial statements. The bond represented a creditor relationship between Hutchison, Shockey, Erley & Co. and the NMFA; and constituted a security under NMSA § 1978 58-13C-102. DD.

In connection with this offer to sell and sale of a security, directly or indirectly, the defendant:

A. Employed a device, scheme or artifice to defraud; and/or

- B. Made an untrue statement of material fact; or failed to state a necessary material fact where such omission would be misleading; and/or
- C. Engaged in an act practice or course of business which operates or would operate as a fraud or deceit upon a person.

The fraudulent practices, material misrepresentations, and omissions include but are not limited to encouraging, aiding, and causing the above bond offer and sale based on information included in the NMFA's FY 2011 audit report including the misleading classification of figures related to the reversion of monies to the state general fund in the accompanying FY 2011 financial statements; and the omission of relevant disclosure information related to the accounting treatment of the reversion of monies to the state general fund, contrary to NMSA § 1978 58-13C-501 and 508, and 30-1-13.

COUNT 2: FRAUDULENT SALE OF A SECURITY (Securities Fraud)

The defendant offered to sell \$22,655,000.00 in bonds entitled SENIOR LIEN PUBLIC PROJECT REVOLVING FUND REVENUE BONDS, SERIES 2012A to the investment firm Guggenheim Securities, LLC, pursuant to a competitive bidding process held on March 22, 2012; and said bond offer and sale was based on a "Preliminary Official Statement" (POS) that included fiscal year FY 2011 financial statements. The bond represented a potential creditor relationship between Guggenheim Securities, LLC and the NMFA; and constituted a security under NMSA § 1978 58-13C-102. DD.

In connection with this offer to sell and sale of a security, directly or indirectly, the defendant:

- A. Employed a device, scheme or artifice to defraud; and/or
- B. Made an untrue statement of material fact; or failed to state a necessary material fact where such omission would be misleading; and/or
- C. Engaged in an act practice or course of business which operates or would operate as a fraud or deceit upon a person.

The fraudulent practices, material misrepresentations, and omissions include but are not limited to encouraging, aiding, and causing the above bond offer and sale based on information included in the NMFA's FY 2011 audit report including the misleading classification of figures related to the reversion of monies to the state general fund in the accompanying FY 2011 financial statements; and the omission of relevant disclosure information related to the accounting treatment of the reversion of monies to the state general fund, contrary to NMSA § 1978 58-13C-501 and 508, and 30-1-13.

COUNT 3: FRAUDULENT SALE OF A SECURITY (Securities Fraud)

The defendant offered to sell \$22,655,000.00 in bonds entitled SENIOR LIEN PUBLIC PROJECT REVOLVING FUND REVENUE BONDS, SERIES 2012A to the investment firm Piper Jaffray, pursuant to a competitive bidding process held on March 22, 2012; and said bond offer and sale was based on a "Preliminary Official Statement" (POS) that included fiscal year FY 2011 financial statements. The bond represented a potential creditor relationship between Piper Jaffray and the NMFA; and constituted a security under NMSA § 1978 58-13C-102. DD.

In connection with this offer to sell and sale of a security, directly or indirectly, the defendant:

- A. Employed a device, scheme or artifice to defraud; and/or
- B. Made an untrue statement of material fact; or failed to state a necessary material fact where such omission would be misleading; and/or
- C. Engaged in an act practice or course of business which operates or would operate as a fraud or deceit upon a person.

The fraudulent practices, material misrepresentations, and omissions include but are not limited to encouraging, aiding, and causing the above bond offer and sale based on information included in the NMFA's FY 2011 audit report including the misleading classification of figures related to the reversion of monies to the state general fund in the accompanying FY 2011 financial statements; and the omission

of relevant disclosure information related to the accounting treatment of the reversion of monies to the state general fund, contrary to NMSA § 1978 58-13C-501 and 508.

COUNT 4: FRAUDULENT SALE OF A SECURITY (Securities Fraud)

The defendant offered to sell and sold \$22,655,000.00 in bonds entitled SENIOR LIEN PUBLIC PROJECT REVOLVING FUND REVENUE BONDS, SERIES 2012A to the investment firm Wells Fargo Bank, pursuant to a competitive bidding process held on March 22, 2012; and said bond offer and sale was based on a "Preliminary Official Statement" (POS) that included fiscal year FY 2011 financial statements. The bond represented a potential creditor relationship between Wells Fargo Bank and the NMFA; and constituted a security under NMSA § 1978 58-13C-102. DD.

In connection with this offer to sell and sale of a security, directly or indirectly, the defendant:

- A. Employed a device, scheme or artifice to defraud; and/or
- B. Made an untrue statement of material fact; or failed to state a necessary material fact where such omission would be misleading; and/or
- C. Engaged in an act practice or course of business which operates or would operate as a fraud or deceit upon a person.

The fraudulent practices, material misrepresentations, and omissions include but are not limited to encouraging, aiding, and causing the above bond offer and sale based on information included in the NMFA's FY 2011 audit report including the misleading classification of figures related to the reversion of monies to the state general fund in the accompanying FY 2011 financial statements; and the omission of relevant disclosure information related to the accounting treatment of the reversion of monies to the state general fund, contrary to NMSA § 1978 58-13C-501 and 508, and 30-1-13.

COUNT 5: FRAUDULENT SALE OF A SECURITY (Securities Fraud)

The defendant offered to sell \$22,655,000.00 in bonds entitled SENIOR LIEN PUBLIC PROJECT REVOLVING FUND REVENUE BONDS, SERIES 2012A to the investment firm Morgan Stanley & Co., Inc., pursuant to a competitive bidding process held on March 22, 2012; and said bond offer and sale was based on a "Preliminary Official Statement" (POS) that included fiscal year FY 2011 financial statements. The bond represented a potential creditor relationship between Morgan Stanley & Co., Inc. and the NMFA; and constituted a security under NMSA § 1978 58-13C-102. DD.

In connection with this offer to sell and sale of a security, directly or indirectly, the defendant:

- A. Employed a device, scheme or artifice to defraud; and/or
- B. Made an untrue statement of material fact; or failed to state a necessary material fact where such omission would be misleading; and/or
- C. Engaged in an act practice or course of business which operates or would operate as a fraud or deceit upon a person.

The fraudulent practices, material misrepresentations, and omissions include but are not limited to encouraging, aiding, and causing the above bond offer and sale based on information included in the NMFA's FY 2011 audit report including the misleading classification of figures related to the reversion of monies to the state general fund in the accompanying FY 2011 financial statements; and the omission of relevant disclosure information related to the accounting treatment of the reversion of monies to the state general fund, contrary to NMSA § 1978 58-13C-501 and 508, and 30-1-13.

COUNT 6: FRAUDULENT SALE OF A SECURITY (Securities Fraud)

The defendant offered to sell \$22,655,000.00 in bonds entitled SENIOR LIEN PUBLIC PROJECT REVOLVING FUND REVENUE BONDS, SERIES 2012A to the investment firm Baird & Co., Inc., pursuant to a competitive bidding process held on March 22, 2012; and said bond offer and sale was based on a

"Preliminary Official Statement" (POS) that included fiscal year FY 2011 financial statements. The bond represented a potential creditor relationship between Baird & Co., Inc. and the NMFA; and constituted a security under NMSA § 1978 58-13C-102. DD.

In connection with this offer to sell and sale of a security, directly or indirectly, the defendant:

- A. Employed a device, scheme or artifice to defraud; and/or
- B. Made an untrue statement of material fact; or failed to state a necessary material fact where such omission would be misleading; and/or
- C. Engaged in an act practice or course of business which operates or would operate as a fraud or deceit upon a person.

The fraudulent practices, material misrepresentations, and omissions include but are not limited to encouraging, aiding, and causing the above bond offer and sale based on information included in the NMFA's FY 2011 audit report including the misleading classification of figures related to the reversion of monies to the state general fund in the accompanying FY 2011 financial statements; and the omission of relevant disclosure information related to the accounting treatment of the reversion of monies to the state general fund, contrary to NMSA § 1978 58-13C-501 and 508

COUNT 7: FRAUDULENT SALE OF A SECURITY (Securities Fraud)

The defendant offered to sell \$22,655,000.00 in bonds entitled SENIOR LIEN PUBLIC PROJECT REVOLVING FUND REVENUE BONDS, SERIES 2012A to the investment firm J.P. Morgan Securities, LLC, pursuant to a competitive bidding process held on March 22, 2012; and said bond offer and sale was based on a "Preliminary Official Statement" (POS) that included fiscal year FY 2011 financial statements. The bond represented a potential creditor relationship between J.P. Morgan Securities, LLC and the NMFA; and constituted a security under NMSA § 1978 58-13C-102. DD.

In connection with this offer to sell and sale of a security, directly or indirectly, the defendant:

- A. Employed a device, scheme or artifice to defraud; and/or
- B. Made an untrue statement of material fact; or failed to state a necessary material fact where such omission would be misleading; and/or
- C. Engaged in an act practice or course of business which operates or would operate as a fraud or deceit upon a person.

The fraudulent practices, material misrepresentations, and omissions include but are not limited to encouraging, aiding, and causing the above bond offer and sale based on information included in the NMFA's FY 2011 audit report including the misleading classification of figures related to the reversion of monies to the state general fund in the accompanying FY 2011 financial statements; and the omission of relevant disclosure information related to the accounting treatment of the reversion of monies to the state general fund, contrary to NMSA § 1978 58-13C-501 and 508, and 30-1-13.

COUNT 8: FRAUDULENT SALE OF A SECURITY (Securities Fraud)

The defendant offered to sell \$22,655,000.00 in bonds entitled SENIOR LIEN PUBLIC PROJECT REVOLVING FUND REVENUE BONDS, SERIES 2012A to the investment firm KeyBanc Capital Markets, pursuant to a competitive bidding process held on March 22, 2012; and said bond offer and sale was based on a "Preliminary Official Statement" (POS) that included fiscal year FY 2011 financial statements. The bond represented a potential creditor relationship between KeyBanc Capital Markets and the NMFA; and constituted a security under NMSA § 1978 58-13C-102. DD.

In connection with this offer to sell and sale of a security, directly or indirectly, the defendant:

- A. Employed a device, scheme or artifice to defraud; and/or
- B. Made an untrue statement of material fact; or failed to state a necessary material fact where such omission would be misleading; and/or

- C. Engaged in an act practice or course of business which operates or would operate as a fraud or deceit upon a person.

The fraudulent practices, material misrepresentations, and omissions include but are not limited to encouraging, aiding, and causing the above bond offer and sale based on information included in the NMFA's FY 2011 audit report including the misleading classification of figures related to the reversion of monies to the state general fund in the accompanying FY 2011 financial statements; and the omission of relevant disclosure information related to the accounting treatment of the reversion of monies to the state general fund, contrary to NMSA § 1978 58-13C-501 and 508, and 30-1-13.

COUNT 9: CONSPIRACY TO COMMIT RACKETEERING

On or between May 1, 2011 and July 1, 2012, in Santa Fe County, State of New Mexico, the defendant, with ~~John T. Duff~~ *Gregory M. Campbell* and or another person or persons, by words or acts, agreed together to commit racketeering; and they intended to commit racketeering, contrary to NMSA 1978, § 30-28-2 and § 30-42-4(D).

COUNT 10: RACKETEERING

On or between May 1, 2011 and July 1, 2012, in Santa Fe County, State of New Mexico, the defendant committed the crime of racketeering while associated with an enterprise, namely the New Mexico Finance Authority (NMFA). The above named defendant operated as Chief Operating Officer in the purported operation of utilizing financing mechanisms to leverage and maximize the State's capital investments in State and local projects. The defendant conducted the affairs of the enterprise by intentionally engaging in a pattern of racketeering activity. The pattern of racketeering activity included two or more crimes of:

Securities Fraud as charged in Counts 1 through 8 in connection with the NMFA's dissemination

of the Preliminary Official Statement and sale of SENIOR LIEN PUBLIC PROJECT REVOLVING FUND REVENUE BONDS SERIES 2012A for \$22,655,000.00 on March 22, 2012, contrary to NMSA 1978, §30-42-1 through § 30-42-5, and 30-1-13.

ACCESSORY (AIDING OR ABETTING), as to all counts.

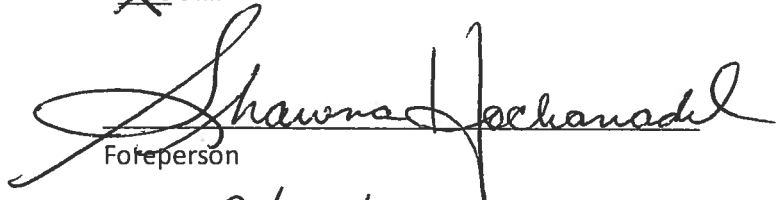
The names of the witnesses upon whose testimony this Indictment is based are as follows:

Benjamin Baker, Special Agent in Charge
NM/RLD Securities Division

Anne Layne, Forensic Analyst
NM/RLD Securities Division

Louis Straney, Securities Litigation Expert Consultant

I hereby certify that the foregoing Indictment is a ~~True~~ ^{NOT TRUE} Bill.


Foreperson

9/20/12
Date

APPROVED AS TO FORM:


Special Assistant District Attorney

9-20-'12
Date

CASE INFORMATION

NO. D-101-CR-2012-00490
Name: John T. Duff
DOB: 07/17/1942
SSN: xxx-xx-9176
ADDRESS: 2408 Westbrook Drive, NW
Albuquerque, NM 87120

BOOKING/ARREST DATE: 08/8/2012
BOOKING/ARREST#: 12121007307
DEF. ATTY: DAVID A. FREEDMAN

PHYSICAL DESCRIPTION OF DEFENDANT:

Height: 6' 4"
Weight: 245
Race: WHITE
Eye Color: BROWN
Hair Color: GRAY
Other:

PENALTIES

COUNTS, 1, 2, 3, 4, 5, 6, 7, 8 3RD Degree Felonies

COUNT: 10 2ND Degree Felony

COUNT: 9 3TH Degree Felony

4th Degree Felony: Basic sentence of 18 months imprisonment and not more than \$5,000 fine.

3rd Degree Felony: Basic sentence of 3 years imprisonment and not more than \$5,000 fine.

2nd Degree Felony: Basic sentence of 9 years imprisonment and not more than \$10,000 fine.

1st Degree Felony: Basic sentence of 18 months imprisonment and not more than \$5,000 fine.

USE OF FIREARM ALTERATION TO BASIC SENTENCE (FE): Basic sentence of imprisonment increased by 1 year for first offense in which a firearm is used and 3 years for subsequent offenses in which a firearm is used.

USE OF HATE CRIME ENHANCEMENT: Basic sentence of imprisonment is increased by one (1) year, unless second offense, then the basic sentence is increased by two (2) years.

Special Penalty: (Receiving or Transferring a Stolen Vehicle (Possession) only) Basic sentence of one year and/or \$5,000 fine.

Misdemeanor: Less than 1 year in the County Jail and/or not more than \$1,000 fine.

Petty Misdemeanor: Not more than 6 months in the County Jail and/or not more than \$500 fine.

Penalty for Driving While Under the Influence, Felony Offense:(4th or Subsequent Offense): Basic sentence of 18 months and not more than \$5,000 fine, including a mandatory jail term of not less than 6 months.

Penalty for Driving While Under the Influence - Misdemeanor: If 1st Offense, basic sentence is maximum 90 days jail and \$500 fine, and if aggravated an additional 48 hours jail time; if 2nd Offense, basic sentence is mandatory 72 hours in jail and \$500 fine to maximum of 364 days and

\$1,000 fine, and if aggravated an additional 96 hours jail time; if 3rd Offense, basic sentence is a mandatory 30 days in jail and \$750 fine to maximum of 364 days and \$1,000 fine, and if aggravated an additional mandatory 60 days jail time.

Penalty for Driving While License Suspended or Revoked: Traffic Code Misdemeanor, Special Penalty: not less than 4 days nor more than 364 days and fine up to \$1,000 (non-DWI related suspension/revocation); or not less than 7 consecutive days imprisonment and mandatory fine not less than \$300 nor more than \$1,000 (DWI revocation).

Penalty for Reckless Driving: Upon first conviction, basic sentence of 5 days to 90 days imprisonment, and/or \$25 to \$100 fine. Upon a second or subsequent conviction, basic sentence of

10 days to 6 months imprisonment, and/or \$50 to \$1,000 fine.

Penalty for Traffic Code Misdemeanor: fine of not more than \$300 or imprisonment for not more than 90 days or both.

Penalty Assessment Misdemeanor: See Schedule in Traffic Code, Section 66-8-116.

1st Degree Felony for Child Abuse (Intentionally Caused) (Resulting in Death) (Child Under 12): Life imprisonment.

2nd Degree Felony Resulting in the Death of a Human Being: Basic sentence of 15 years but not

less than 10 years nor more than 20 years imprisonment and not more than \$12,500 fine.

3rd Degree Felony Resulting in the Death of a Human Being: Basic sentence of 6 years but not less than 4 years nor more than 8 years imprisonment and not more than \$15,000 fine.

2nd Degree Felony, Sexual Offense Against A Child: Basic sentence of 15 years imprisonment and not more than \$12,500 fine.

3rd Degree Felony, Sexual Offense Against A Child: Basic sentence of 6 years imprisonment and not more than \$5,000 fine.

OPEN CHARGE OF MURDER

Penalty for FIRST DEGREE MURDER (Willful and Deliberate) or (Depraved Mind)

CAPITAL FELONY: Life Imprisonment

SECOND DEGREE MURDER: Basic sentence of 15 years imprisonment and not more than \$12,500 fine.

VOLUNTARY MANSLAUGHTER: Basic sentence of 6 years imprisonment and not more than \$15,000 fine.

INVOLUNTARY MANSLAUGHTER: 4th Degree Felony: Basic sentence of 18 months imprisonment and not more than \$5,000 fine.

Penalty for FIRST DEGREE MURDER (Felony Murder):

CAPITAL FELONY: Life Imprisonment

STATEMENT OF TRUE BILL

	True Bill	NO True Bill
Count 1		X
Count 2		X
Count 3		X
Count 4		X
Count 5		X
Count 6		X
Count 7		X
Count 8		X
Count 9		X
Count 10		X

9/20/12
Date

Shawna Hachanadel
Foreperson